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**Report No. 6
Contract Legal and
Regulatory Framework**

**Solid Waste and Public
Clean-Up Project
Governorate of Alexandria,
Egypt**

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Prepared for
Governorate of Alexandria, Egypt
and
United States Agency for
International Development

Prepared by
Abt Associates Inc.
The Institute for Public-Private
Partnerships

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REPORT NO. 6
CONTRACT LEGAL AND REGULATORY FRAMEWORK

Solid Waste and Public Clean-Up Project
Governorate of Alexandria, Egypt

INTRODUCTION

The purpose of this report is to assess the existing legal and regulatory framework pertaining to solid waste management and public clean-up within the Governorate of Alexandria, Egypt (GOA). The report is divided into five sections, which include the following:

- Existing Laws Applying to Solid Waste Management
- Legal and Regulatory Requirements Governing Solid Waste
- Administrative/Regulatory Requirements for Public-Private Partnerships
- Tendering and Contracting Procedural Requirements
- Contract Enforcement and Dispute Resolution

Existing legislation has gaps and overlapping provisions that could constrain effective implementation of the GOA's solid waste and public cleaning project. For example, Law 38/67 on solid waste management lacks descriptions of medical and hazardous waste and imposes only minimal penalties for violating the cleaning law. An opposite example would be Law 4/94 on Environmental Protection, that contains broad descriptions of various types of waste but its institutional structure for implementation is not well defined. These examples illustrate the need for additions to current legislation. Existing laws are further discussed within this report with recommendations for institutional and legal revisions.

Recommendations are provided at the end of each section for changes that may be needed in existing laws to make them consistent with the implementation of solid waste privatization projects in Egypt. Some recommendations require legislative action, while others may be implemented by amending existing regulations. Implementation of the recommendations will help ensure the effective implementation of the solid waste management and public cleaning privatization project.

EXISTING LAWS APPLYING TO SOLID WASTE MANAGEMENT

Background to Solid Waste Management Laws

Historically, Egyptian laws on solid waste management originated around the desire to protect the Nile River and its surrounding environs. The laws pertain specifically to the protection of rivers, residential areas, agricultural lands, and industrial sites from the improper disposal of solid and liquid waste.

Law 58/1937 is an example of an early solid waste management law. It prohibits throwing dangerous waste, solid waste, or dirt on carts, cars, buildings owned by others, gardens, or in the

Nile River and its waters, canals, or other waterways that would impede navigation. It also made it illegal to store dangerous material on the roofs of houses, which would affect public health (Articles 377-378). This law lacked implementation regulations or guidelines and therefore, enforcement was weak. Legislation that succeeded Law 58/1937 addressed more specific and diverse areas. Enforcement improved with the enactment of implementing regulations. Other examples of environmental protection legislation include the following laws:

- Law 93/1962, Liquid Waste Drainage
- Law 48/1982, Nile River Protection
- Law 4/1994, Environment Protection

Solid waste management legislation includes the following:

- Law 159/1953 (superceded by 38/1967) and Law 97/1956, Cleaning Public Squares, Streets and Highways and the Organization of Garbage Collection and Transfer
- Law 151/1947 (superceded by 38/1967), Cleaning Fences and Unused Areas
- Law 38/1967, General Public Cleaning

Solid Waste Management Administrative/Institutional Framework

The structure of Egypt's government administration assigns functions that are performed by the central government and by the governorates. Their relationship is defined by the Constitution and the respective laws enacted thereunder. These laws define ministry authority at the central government and governorate levels as well. The Law on Local Government System, Law 43/1979 and its updates of 9/1989 and 84/1996, defines governorate powers and the role of local councils in every governorate.

The administrative system can be a source of confusion and inconsistencies concerning ministry and governorates's jurisdictional boundaries. Geographic areas typically have a local government represented by a local council that is monitored by the Local Popular Council. The Local Popular Council is elected by a general secret direct election. Such Local Popular Councils of a governorate are required by law to "take charge and control of various utilities and works including the competence, integrity and the performance of the Governorate" (Article 12-43/1979).

One of the major aspects of such close monitoring is the sector of public health, housing, and local utilities (Article 7, Ministerial Decree 707/1979, Executive Regulation of Law 43/1979). Each Governorate functions independently (within certain criteria dictated by the central government) in accordance to its own needs, requirements and priorities including the strategy, criteria, and methods of dealing and contracting with third parties for services without violating laws, regulations, and public order.

From the above it can be seen that solid waste management falls within the domain of the governorates and local governments. It is also a component of environmental protection that is

of concern to the central government represented by the Egyptian Environmental Affairs Agency (EEAA). Therefore, in order to minimize the inconsistencies and confusion, laws and decrees should be closely coordinated and provide for a clear definition and delineation of responsibilities between the central government, governorates, and local governments.

Institutional coordination is necessary to effectively implement Environmental Law 4/1994 provisions relating to solid waste management. This is important because the GOA is engaging a private sector solid waste service provider, where institutional relations in solid waste management, standards of operations, supervision, and monitoring of the operations will be contractually established. The roles of institutions, such as the GOA and EEAA, concerned with solid waste management should be defined in relation to obligations set forth in the contract. Close institutional and operational coordination is therefore essential.

In the following sections, the legal authority of the GOA for providing solid waste management services and its contractual authority will be analyzed. In addition, the institutional and legal parameters related to solid waste management will be examined.

Authority for Solid Waste Management--

The Local Government System Law 43/1979, Article 2 empowers the GOA to establish institutions and manage public services such as solid waste management and public cleaning. These services must be provided in a manner consistent with applicable laws and regulations. Accordingly, the Governor of Alexandria by Decree 175/1989, established the Cleanliness and Beautification Department of the GOA to provide solid waste management services.

The jurisdiction of EEAA only exists in heavily populated areas, unless the matter involves hazardous wastes of any form or nature. Informal housing and unregulated housing areas without sufficient infrastructure are seldom monitored by EEAA. The main theme of existence for the EEAA relates to borders, natural resorts, coastal areas, natural protected habitats, and addressing environmental crises such as oil or hazardous waste spills.

Governor and Local Popular Council Contract Administrative Powers--

The GOA administrative office performs public duties after consulting with stakeholders to secure consent and approval as defined in Article 1(a), 2-4 of the Local Government System Law 43/1979. For example, the Governor or the Local Popular Council may initiate a new solid waste and public cleaning project. The Governor submits the proposition to the Local Popular Council to examine, deliberate, and pass appropriate resolutions.

The resolution making process includes evaluation of the project by a special committee of the Local Popular Council (normally assisted by independent experts), discussion with relevant government departments and other affected parties including the Governor's office, and deliberation and resolution by the Local Popular Council plenary session. The resolution of the Local Popular Council is submitted to the Governor for action. In case there is a conflict between the Governor's opinion and the Local Popular Council's resolution, the sector Minister will give a final and conclusive opinion to solve the conflict.

The GOA has adhered to these legal procedures to solicit tenders for the Alexandria Solid Waste and Public Cleaning project. The Book of Conditions and Specifications and tender document, specifies that the project will cover all areas of the GOA within its administratively sanctioned geographical boundaries. The primary objective of engaging a private sector provider is to optimize the conditions required to achieve the highest level of public cleaning and integrated environmental improvement at the lowest possible cost.

Contracting Authority and Limitations--

The GOA has the legal authority to enter into and execute a contract under the Local Government Act, Article 27. Therefore, any obligation that the GOA assumes under a contract with a private provider for solid waste and public cleaning services will be binding on the GOA.

Institutional Responsibilities--

Article 2 of the Local Government System Law 43/1979, obligates the GOA to provide public services such as solid waste and public cleanliness in compliance with laws and regulations pertaining to the public services. Public service sector laws include health, environment, labor, and budget. These laws are implemented by various ministries and agencies, with which the GOA should interact and coordinate, particularly when selecting a private sector service provider to perform services such as those contemplated for the Alexandria Solid Waste and Public Clean-Up Project.

The national government and governorate level agencies have the legal authority to enforce the applicable provisions of Environmental Law 4/1994 and Cleanliness Law 38/1967 pertaining to the collection, transport, and disposal of solid waste. These laws contain some common provisions with slight variations that the EEAA and the GOA are required to implement. The Environmental Law applies to broader environmental sectors. Since the EEAA is institutionally limited with respect to implementation of environmental improvement activities, but is responsible for enforcement, the GOA institutions responsible for solid waste management and public cleanliness should coordinate with the EEAA to define implementation methods related to overlapping statutory functions.

In the following sections the responsibilities of the institutions will be discussed to identify contradictions in the laws and their potential effects on the planned private sector participation in providing the solid waste and public cleaning services.

Article 2 of Law 43/1979 on Local Government Systems states that local governments are responsible for managing all public utilities falling within their jurisdiction with the exception of national utilities having special nature and governed by a presidential decree. The Local Popular Council, an elected representative body, is in charge of various utilities including establishing and imposing duties in the governorates. In the GOA, the Local Popular Council and the Department of Cleanliness and Beautification are responsible for solid waste management and public cleaning.

Prime Minister Decree 338/1995 establishes the EEAA to enforce Environmental Law 4/1994. The Environmental Law prescribes conditions for dumping, treating, or burning garbage and authorizes the EEAA Executive Officer to ensure the application of these provisions with the agreement and in coordination of other concerned establishments.

Environmental Law 4/1994 does not rescind any of the existing laws on solid waste management nor prescribe their parallel implementation. However, this law requires that organizations affected should, within 3 years, submit to the EEAA adjustments in their procedures necessary to come into full compliance with the law. This implies that the relevant sections of Law 43/1979 on Local Government Systems and Law 38/1967 pertaining to the collection, transport, and disposal of solid waste will remain in force, adjusting to the provisions of the Environmental Law 4/1994 in case of discrepancy.

Environmental Law 4/1994 and its implementation Decree 338/1995 are more recent than Law 38/1967 and therefore impliedly override inconsistent provisions of the earlier law. It may be argued that the Public Cleanliness Law 38/1967 dealing specifically with solid waste may take precedence over the general Environmental Law. But the legal obligation to comply with the provisions of Environmental Law 4/1994 within three years dismisses the argument.

For the purposes of the Alexandria Solid Waste and Public Clean-Up Project the contracting office of the GOA, the Local Popular Council, and the Regional Branch Office of the EEAA should coordinate in order to give the winning bidder a clear legal and regulatory mandate for implementing the terms of the contract.

As Law 38/1967 pertains specifically to solid waste management, we recommend that the relevant provisions of the law and its implementation Decree No. 134/1968 issued by the Minister of Housing should be amended to accommodate the relevant provisions of Environmental Law 4/1994 and to clarify institutional responsibilities and coordination methods between the EEAA branch offices and responsible governorates. This will help eliminate potential sources for legal challenge when projects are initiated under any of these laws.

Legislation Shortcomings

Legal provisions that are too broad and general, or provide incomplete descriptions of a legal act, condition, or standard, or provide incomplete coverage of the range of issues that the law was designed to address cause gaps in legislation. Legislative gaps lead to differing interpretations of the provisions of the law and therefore render enforcement difficult.

Laws 38/1967 and 4/1994 include a number of gaps as described below. These gaps may be removed by amending the relevant provisions in the laws or the implementing regulations to the laws. Such amendments will help governorates, towns, and villages to effectively implement solid waste collection, transfer, and disposal activities.

The following describes the general provisions and gaps in existing legislation that may need changes or clarifications in the future.

- Broad and general provisions include the following:
 - Article 1 of the implementing Decree of Law 38/1967 defines “garbage” as household, commercial, industrial, and other waste. Environmental Law 4/1994 and its implementing Decree 338/1995 have a wider classification including medical, hazardous, demolition debris, etc. The implementation Decree of Law 38/1967 should be amended to include a wider classification of solid waste and specify appropriate collection, transport, and disposal procedures.
 - Article 39 of Environmental Law 4/1994 prescribes cleanliness of garbage bins and conditions of transport in broad terms and delegates the competent local authorities to control and implementation of the provision. The GOA as local authority implements details of solid waste management by Law 38/1967 as amended. The implementing regulation of this law should set standards for garbage containers, size, types of garbage collected in each (e.g., paper products, glass, plastic etc), truck types and equipment, and types of loading and unloading.
 - Articles 38 and 39 of Environmental Law 4/1994 provide conditions for burning or dumping solid waste, and broadly describes cleanliness standards and delegates implementation details to local governments. Standard of cleanliness for streets, beaches, monuments, and garbage bins should be described in implementing regulation of both Environmental Law 4/1994 and Law 38/1967 as amended. Such standards should be criteria for monitoring the provision of services in the solid waste management and public cleaning project.
 - Article 20 of the Environmental Law 4/1994 provides that existing environmental monitoring networks remain units of the competent authority. The EEAA shall supervise the establishment and operation of the environmental monitoring network as a step towards creating a national program for environmental monitoring. The law does not provide mechanisms for coordination between the concerned solid waste law implementing bodies and the EEAA for monitoring solid waste management. Cooperation between the EEAA Regional Branch Office and concerned departments in the GOA should be spelled out in the Environmental Law implementing regulation.
- Gaps relating to incomplete conditions and standards include Article 50 of Environmental Law 4/1994 prescribes reporting requirements for oil pollutants that may threaten coastal areas. The law and its implementing regulation and Law 38/1967 as amended, lack details of responsibility for cleaning where oil or other waste from the sea is washed on shore. Conditions that fall within the responsibility of the riparian governorate should be specified. This is especially important to establishing appropriate contractual obligations of a concessionaire that is engaged in cleaning beach areas regularly.
- Gaps relating to the absence of relevant provisions include the following:
 - Environmental Law 4/1994 and Law 38/1967 prescribe penalties for violations of solid waste and cleaning provisions, but do not have the legal principles of the

“polluter pays” for damages caused. Provisions relating to payment by the polluter for damages caused as a result of mishandling or inappropriate disposal of solid waste should be included under the penalty clauses of both the laws.

- The rate setting methodology for determining fees for solid waste and cleaning services, and methods and procedures of tariff rate revision should be indicated in the implementing regulation of Law 38/1967 as amended.
- **Inconsistent provisions include the following:**
 - The EEAA and the GOA by law can claim the fines collected. The organization having precedence over penalties arising from solid waste violations should be specified under the penalty and dispute resolutions clauses of the implementing regulations of Environmental Law 4/1994 and Law 38/1967 as amended.
 - Coordinating enforcement methods and administrative dispute resolution systems of the EEAA branch offices and the responsible governorate agencies for waste management would increase effective implementation of laws pertaining to solid waste management. These should be spelled out in the implementing regulations of both Environmental Law 4/1994 and Law 38/1967 as amended.

LEGAL AND REGULATORY REQUIREMENTS GOVERNING SOLID WASTE

The following sections pertain to the laws and decrees that govern the general solid waste service areas. They are typically incomplete and do not completely reflect current conditions.

Storage

The GOA regulates solid waste by the Public Cleanliness Law 38/1967 as amended. The law prohibits putting garbage, dirt, residuals, or dirty water at locations other than those designated by the Local Popular Council and obliges residents, commercial enterprises, and public facilities to keep garbage in special containers and empty them according to specifications. The specifications are provided in the Minister of Housing Decree 134/68, which defines garbage as “solid or liquid residuals wasted” from a list of entities including those mentioned above, individuals, and factories. This definition does not mention medical and other hazardous waste although they were mentioned in the body of the law. The law specifies that garbage containers should conform to the following specifications:

- Manufactured from metallic solid material or equivalent.
- No holes in order to prevent liquids and waste leakage.
- A tight cover with two handles.
- Suitable capacity for the quantity of waste discarded.

The law does not give details of the size, height, and width that may be required for different locations and different types of wastes. However, it mandates the Agency for Cleanliness to provide detailed specifications or models for containers. This provision should be amended with

details pertaining to the capacity of containers for various locations and types of garbage, or supplemented with GOA directives to avoid conflict of interpretation of the term “suitable capacity” by the private service provider and by the GOA.

Waste Transport

Articles 14 and 15 prescribe methods of transporting solid waste. The method and equipment used to transport the waste should be maintained in the following manner:

- Good working condition.
- Water tight to avoid the leakage of fluids.
- Covered to prevent litter from blowing.
- Internally lined with galvanized tin or zinc or any equivalent material.
- Transported in a licensed cart or truck, which is covered to prevent littering.

The term “good condition” should be defined in detail with specifications such as age of the vehicle, tune-up certificates, insurance, and annual Department of Vehicles inspection certificates. These types of specifications should be included in a GOA handbook for cleanliness.

Waste Disposal

The law specifies several landfill (public or private) conditions under Article 16 with emphasis on accessibility and distance from residences, fencing, water resources, and facilities. It requires landfills to be located at a minimum distance of 250 meters from residential and agricultural sites. This provision is superseded by Environmental Law 4/1994, which requires 1,500 meters instead of 250.

Article 41 of Prime Minister’s Decree 338/1995 implementing Law 4/1994 separates building demolition debris from other solid waste and requires that it be disposed at a distance not less than 1.5 kilometers from residential regions, at a low contour level, and then leveled after filling. Article 38 (2.4) of this Decree authorizes the local units in agreement with EEAA to define sites for dumping and treatment. As a practical matter, both agencies are cooperating in identifying landfills for the Alexandria Solid Waste and Public Clean-Up Project.

Burning of Solid Waste

The law prescribes conditions of garbage burning and prohibits operators from emitting airborne pollutants from the facility. This specification is not strictly defined compared to the conditions of burning medical and other hazardous wastes. The Ministry of Health explained its responsibilities in this process as analyzing samples of waste to measure toxic substances and alert the responsible organization to take action. The Ministry has no enforcement power.

Environmental Law 4/1994 prescribes methods and conditions of operating incinerators, specifically those incinerating infectious waste unlike Law No. 38/1967 for the Public Cleanliness and its implementing Decree of the Ministry of Housing No.134/1968 that does not

address incineration. Under Article 38(1) of Prime Minister's Decree 338/1995, infectious waste (medical waste) burning incinerators should be located at a minimum of 1,500 meters away from nearest residential area.

Recommendations for Change

The following are recommendations for some of the changes that need to occur in the existing law.

- Integrate the solid waste provisions of Law 4/94 and implementing Decree 338/1995 with Law 38/67 as amended and implementation Decree 134/1967 by an amendment.
- Standards should be developed for transfer stations, composting facilities, medical waste, and hazardous waste disposal methods by amending the implementing decree to Law 38/1967.
- The laws and decrees pertaining to landfill disposal should be reevaluated to conform with modern practices.
- The incinerator construction and operating requirements for infectious, medical, and hazardous waste burning under Law 4/1994 and the implementing Decree 338/1995 should be integrated into Law 38/1967 and its implementing Decree 134/1968.
- Prepare an operational standards manual for public cleaning.
- Define institutional and operational relationships and cooperation between the governorate's solid waste management offices, EEAA, and other organizations such as the Environmental Health Department of the Ministry of Health.

ADMINISTRATIVE/REGULATORY REQUIREMENTS FOR PUBLIC-PRIVATE PARTNERSHIPS

Labor Management and Administration

The GOA Cleanliness and Beautification Department management system, grades, and job classifications were approved by the Central Agency for Organization and Administration (CAOA) on May 25, 1989. An example of the job descriptions provided for the department includes the following:

- Head of the Central Department
- General Manager for the following:
 - Cleaning
 - Gardens
 - Equipment Maintenance, Collection, and Cleaning

- Licensing and Contracting
- Cleaning Worker

The job descriptions describe the grades that determine the salaries and benefits subject to the Law 47/1948 on the Civil Service System. The private contractor for the Alexandria Solid Waste and Clean-Up Project is required to employ not less than fifty percent of the GOA's existing labor force. The contractor is obligated to pay governorate-approved wages, and social, risk, and meal allowances to the workers. Wages are paid directly to the workers and the benefits are paid to the GOA, which then disperses the benefits payments for and to the former GOA laborers (Article I-4-4 Book of Conditions and Specifications).

Law 47/1978 governs civil service in ministries, central agencies, local administrations, and public authorities. Existing solid waste workers are subject to this law. The workers that will serve the Alexandria Solid Waste and Public Clean-Up Project will, on the other hand, be subject to the Labor Law 137/1981. The transfer of employees from the Governorate to the private company needs to be evaluated for compliance with Law 47/1978.

A worker may be transferred from one organization to another, according to Article 55 of Law 47/1978, for non-performance of duties or to reduce excess labor with the approval of the CAO and the Ministry of Finance.

Worker transfer to a private company is not covered under that law. A remotely similar example would be the transfer of workers from the governorate civil service system to public economic authorities (PEA). The same civil service Law 48/1978 governs water service PEA workers. The transferee should agree to the transfer in writing (Article 56).

In the case of the Alexandria Solid Waste and Public Clean-Up Project, the transferees will be on secondment and therefore continue to accumulate seniority with similar position and grade in the Cleanliness and Beautification Department (Law 48/1978 Articles 58 and 59). The worker benefits under the Civil Service Law 48/1978 includes a 7 percent annual wage raise, annual and sick leave, one pilgrimage during the employment period, and dismissal only on grounds of grave mistake, conviction for criminal offense, drunkenness at work, or physical assault on supervisor (Articles 60 and 61).

Certain issues like choice of changing to company employment under the Labor Law 137/1981 should be considered in negotiating terms of the transfer, so that the transferee may benefit from union membership, negotiated wages and benefits, and company promotion, training, performance appraisal, leave, and discipline and dismissal rules. These changes should be clarified to the transferee so that he/she makes informed decisions whether or not to join a private company.

The GOA should plan in advance to secure the approvals of CAO and the Ministry of Finance for transferring the workers and also for integrating the newly recruited monitors into the proposed Cleanliness organization.

Recommendations--

- Secondment of workers to the Alexandria Solid Waste Clean-Up Project should be with written consent of the workers. An option for the transferees to become a company employee under the Labor Law should be negotiated with the contractor. Approval of the CAO and Ministry of Finance should be secured for the transfer.
- The GOA should secure CAO and Ministry of Finance approvals for the proposed Cleanliness Organization and integration of monitors.

Licensing

Law 38/1967, Article 6 prohibits work in residential collection and disposal of solid waste without having the necessary license from the Local Assembly according to the conditions and rules issued by an Assembly Decree. Environmental Law 4/1994, Article 39 authorizes local governments to determine the requirements of solid waste collection and transport. These laws authorize the Local Popular Council to issue licenses for the right to provide solid waste management services. However, medical and hazardous waste are subject to other licensing authority (Article 31, Law 4/1994).

The EEAA is authorized to set conditions of licensing and management of medical and hazardous waste under Articles 29 and 30 of Law 4/1994. In addition, Prime Minister's Decree No. 338/95 (implementing Law No. 4/94), Article 38(2) requires pre-licensing from EEAA and Civil Defense for burning of infectious waste (medical waste) under the supervision of local administration.

In the tender for the Alexandria Solid Waste and Public Clean-Up Project, the contractor is obliged to hire small companies. These companies must have licenses from two authorities if they provide medical and hazardous or other solid waste management collection, treatment, and/or disposal services.

Enforcement

The Cleanliness and Beautification Department of the GOA has the juridical authority provided in the law, to enforce laws and impose penalties on violators by a decree of the Minister of Justice (Article 11a of Law 38/1967 as amended). This authority has not been effectively used in the past due to a lack of adequate resources and unclear local and national institutional relationships.

In 1998 the Governor of Alexandria issued Decree No. 1065 giving authority to the Central Department for Cleanliness and City Beautification and the six districts and Borg el Arab City to arrest anyone transporting and illegally dumping dust, residuals, or garbage on or beside public roads and streets or at the city entrances. The Central Department for Cleanliness was allowed to keep and use the collected fines to pay for the removal of residuals. The department was required to spend the collected fines within 6 months starting from the date of arrest.

The owner may pay LE 1,000 to retrieve the vehicle, as a compensation for the wages of the Department workers and add to the Department's cleanliness Fund. The objective of the sequestration decree was to solve enforcement problems and also to indirectly increase the small amount imposed as penalty (i.e., LE 100) under Law 38/1967. However, such a decree could be rejected in front of a court of Law because Laws overrule decrees.

The EEAA has enforcement authority similar to that of the GOA. The Minister of Justice (Article 102 Environmental Law 4/1994) bestows EEAA officers with juridical power. However, the Alexandria EEAA Regional Branch Office does not have adequate staff to enforce the provisions of the law. Article 24 of Environmental Law 4/1994 provides for the creation of an environment monitoring special force under EEAA. Article 65 of Prime Minister Decree 338/95 provides for the implementation of this Article by a special environmental police force to be established by the Ministry of Interior in coordination with the EEAA. The special force is authorized to receive complaints and take necessary legal actions.

The enforcement laws, though potentially strong, have not been complemented with adequate procedural policy or adequate financial and human resources. The juridical powers and the poorly defined relationship between the special force and the proposed monitoring group in the new Solid Waste and Public Cleaning Department in the GOA may lead to areas of potential duplication.

The proposed Solid Waste and Public Cleaning Department is expected to succeed in the use of the existing juridical power (given to the GOA City Cleaning and Beautification Department). It should coordinate this power with the enforcement powers of the EEAA. Details of institutional cooperation with enforcement agencies should be agreed upon by the organizations concerned and issued in a GOA decree.

Furthermore, the proposed Solid Waste and Public Cleaning Department should encourage interaction between the enforcement system and field monitors, who will be effective in identifying violators. Internally, a conflict management unit with juridical power to hear violation cases and impose penalties should be part of the institutional structure of the proposed Solid Waste and Public Cleaning Department.

Recommendations --

- Define the scope of authority and coordination by GOA decree and the institutional relationship between the proposed Solid Waste and Public Cleaning Department, the EEAA, and the Ministry of Interior for effective enforcement.
- Establish a conflict management unit with personnel having juridical power according to the existing law.
- Develop monitoring reports to include procedures to identify violators.

Penalties

The penalty imposed on solid waste collection, transfer, and disposal law violators is up to LE 100 under the cleanliness law. It ranges from LE 1,000 up to LE 20,000 under the Environmental Law. The General Egyptian Penal Law is less punitive (Articles 377 and 378) in that it enjoins acts of illegally dumping waste and punishes with fines of between LE 50 and 100.

Article 9 of Law 38/67 as amended, states that the penalty shall be imposed “without affecting any stronger punishment in other law”. This allows the imposition of harsher penalties under the Environmental Law and Alexandria Governor Decree 1065/1998. A judge will have the discretion to choose the type of penalty for violations committed. Since enforcement is important to the successful implementation of the Alexandria Solid Waste and Public Clean-Up Project, penalties should be consolidated to give the judge or, more importantly, the proposed conflict management unit of the proposed Solid Waste and Public Cleaning Department more effective enforcement power. This may require amendment to Law 38/1967 and its implementing regulation.

Recommendations --

- Consolidate penalties relating to violations of solid waste laws and decrees under Law 38/1967 and the implementing decree.
- Rescind the low fines that may not have any deterrence effect on violators.

Tariff Regulation

Article 1(4-3) of the Book of Conditions and Specifications of the Alexandria Solid Waste and Public Clean-Up Project tender document provides that the GOA “Cleanliness Fund Account” will cover the project costs and therefore the contractor shall not collect any tariff from any person or body for performing the services prescribed under the contract”. To raise sufficient revenue to pay for the services provided by the private contractor, a service charge would be applied by the GOA and issued on the electricity bill. The charge is calculated on the basis of approximate ability to pay as determined by dividing the city into four sectors based upon income levels. The Electricity Company will collect the money and forward the collection to the Cleaning Fund of the GOA.

This tariff setting and collection method replaces the historical rate setting and collection method that was based upon the value of rent on residential property under Law 38/1967. Article 8 of that law provides that the Local Popular Council shall set a compulsory fee to be paid by houses and residences which equals 2 percent of the rental value. The enforcement of this law has been weak at best, as users were consistently delinquent in paying the user fees and no legal action has been reported. Consequently, little revenue was collected and therefore, solid waste management was required to be subsidized through state budgetary allocations.

To implement the program of adding a new tariff on electricity bills for waste management services, appropriate procedures at the Local Popular Council and the Cabinet levels must be

followed. Article 12 (7) of Decree 43/1979, as amended, on local Government System provides that the Local Popular Council shall be responsible for, “Imposing the duties having the local character...or amending them ,...or the exemption (from the duties), or their cancellation after the approval by the Cabinet”.

Solid waste collection and disposal qualifies as “public utility of local character”. Therefore, the Local Popular Council is authorized to approve the establishment of solid waste management as a public utility as it brings about benefits for the GOA (Article 12-4 Government Systems Law 43/1979). The Local Popular Council has jurisdiction on fixing service fees for solid waste management services.

The proposed tariff setting and enforcement system does not provide a mechanism for regular tariff rate review nor does it necessarily provide for covering costs for providing the services. In international practice where a concession or exclusive franchise is granted, the price cap and/or rate of return methods are commonly used for setting and reviewing tariffs for utility service providers.

In the price cap model the utility regulator establishes a tariff review period, for instance, once every three years. Rates are determined based on cost projections and the regulator sets limits on tariffs rather than on profits. Tariff adjustments are linked to an inflation index. Within the rate cap, an investor may increase profits by increasing efficiency and productivity.

In the rate of return model, the investor is guaranteed a rate of return on his investment as determined by the regulatory agency according to prevailing market conditions. The regulatory agency fixes the price level and structure based on historical costs. Thus, increasing the investment in the utility may allow the investor to apply for rate review. These models may be adjusted in the rate setting process to reflect actual cost recovery.

Private sector participation could result in much higher benefits and lower total overall cost if the tariff setting method were based on the amount of service (reflected in cost) actually provided to each customer. In this situation, the customer would be individually responsible for his own consumption and thereby, have the incentive to reduce the quantity of waste generated. This could then result in the GOA being relieved from the need to provide budget subsidies.

TENDERING AND CONTRACTING PROCEDURAL REQUIREMENTS

General Information

Law 89/1998 and its associated Executive Regulation issued by the Ministry of Finance (# 1367 for the year 1998) govern all government tenders for procurement of goods and services. The law provides general conditions for procurement and sets monetary ceilings for different levels of government departments for purchase through competitive bidding or negotiation. This law applies to the State’s Administrative Units and Public Authorities whether economic or service units including procurements for services such as the Solid Waste and Cleaning Project of Alexandria. Article (1) of the promulgation decree deleted law 9/1983 related to the organization of Tenders and Bids.

The law and associated regulations prescribe procedures for conventional public tendering as well as exceptions such as limited tenders directed to selected providers, local tenders applying only to providers in the jurisdiction of the tendering office, and direct negotiation (limited practice) applying to only one provider of goods or services.

Contracting/Tendering Methods

Public tenders apply to purchase of both goods and services and include long-term concession contracts. The specific method used to procure goods or services (public tenders or direct negotiation) shall be determined and made known by a decree issued from the “Competent Authority” according to the circumstances and the nature of the contract. A “Competent Authority” is defined in the law as “The Minister (and any other person vested with his powers), the Governor or the Chairman of the Public Authority without prejudice to the controls governing the delegation of powers.”

Procedural variations of the Tendering/Contracting process are permitted by law and its associated regulations including the following:

- **Limited Tender:** Applicable in cases where the nature of the contract requires restricting the participants in the tender to certain suppliers, contractors, consultants, technicians, or experts, whether in Egypt or abroad, provided that they have the technical and financial qualifications to fulfill the requirements of the work.
- **Local Tender:** Permitted in cases where the value of the Contract does not exceed two hundred thousand Egyptian Pounds. Participation in a “Local” tender will be restricted to local suppliers and contractors who perform their business in the territory of the Governorate in which the Contract will be executed.
- **Limited Practice (Negotiation):** Contracting through negotiation is permitted where the desired items are neither manufactured, imported, or available except with specific entities or persons; are of a special nature that dictates they should be purchased from their manufacturing location; are of a technical nature that requires the use of technicians, specialists, or experts; or the services are related to matters of national security and therefore should be conducted secretly.
- **Direct Agreement:** In the case of extreme emergency where time does not permit using other methods, contracting can be through a direct agreement. This method requires the permission of the President of the authority or the administration (and whoever is at the same level in other entities) if the contract will not exceed fifty thousand pounds; the competent Minister (and whoever is in the same level) or the Governor if the contract value exceeds one hundred thousand pounds; or the Prime Minister in the case of extreme need when the contract value exceeds one hundred thousand pounds.

Tender Evaluations

Public tender and public practice (negotiation) shall be subject to the principals of publicity, equal opportunity, and freedom of competition. All actions or resolutions taken by a tender committee shall include the reasons on which the resolution or action was based.

The advertisement of an “internal” public procurement shall be inside the Egyptian territories whereas the advertisement of an “external” procurement shall be inside and outside the Egyptian territories. Advertisement of the procurement must be in the daily newspapers and in addition, may be advertised in any other massively circulated media.

The Law requires that the “Competent Authority” establish a tender committee comprising technical, financial, and legal experts. When a tender involves an international party or the amount exceeds one million pounds, the evaluation committee should include representative of the Ministry of Finance and legal counsel of the State Council according to Article 6.

In the case of an internal practice (negotiated) procurement, a representative of the Ministry of Finance must be a member of the committee if the value of the contract exceeds two hundred and fifty thousand pounds. If the value of the contract exceeds five hundred thousand pounds, the committee must include a representative from the Competent Consultation Administration of the State Council. In the case of a foreign practice (negotiated) procurement, a representative of the Ministry of Finance and the Competent Consultation Administration of the State Council must be members of the committee if the value exceeds one million pounds.

Tenders shall be submitted in two envelopes containing a technical and a financial proposal. The evaluation of bid proposals is delegated to two committees to open the technical and the financial bids respectively. If the value of the tender does not exceed fifty thousand pounds, only one committee is required. The opening of the financial envelopes is limited only to those firms submitting acceptable technical proposals. The committees are allowed by law to accept external expert assistance in evaluating the bid proposals. The committee may form sub-committees from its members to examine the technical and financial aspects of the tender and its compliance with the required terms.

A tender may be canceled at any time prior to making a decision if it is determined to be in the best interest of the government to do so. A tender may also be cancelled for other reasons including that only one tender was submitted or only one tender was left after eliminating other tenders during the evaluation process; the tenders were non responsive; or the value of the lowest tender exceeded the estimated value. Cancellation in the previously mentioned cases must be by decree issued by the competent authority upon a recommendation from the committee making the decision. The decree issued from the competent authority must include the reasons on which the decision was based.

The executive regulations of the law also states that the competent authority may, upon a recommendation from the committee making the decision, accept the sole tender that was submitted in the following cases:

- If the need for the services does not permit the re-announcing of the tender or if there is no benefit expected from re-announcement.
- If the sole tender complies with the required conditions and terms and has an acceptable price.

All tenders not complying with the terms and conditions set forth in the Request for Tenders must be excluded from consideration. The decree excluding any tenders must include the reasons for its exclusion.

The tender shall be awarded to the tenderer who offered the best terms and conditions and has the lowest price, after unifying the comparison criteria between all the submitted tenders regarding all technical and financial considerations. The tender submitted by Egyptian entities will be considered lower in price even if it exceeds the lowest tender submitted by a foreign entity by 15 percent or less.

Other Requirements

Each tender must include a bid bond in an amount determined by the administrative authority, providing that the amount does not exceed 2 percent of the estimated value of the work. The bid bond will be returned to the bidder upon the lapse of the validity duration of the tender.

The successful bidder must pay within ten days, starting from the day following notification of the acceptance of his tender by registered letter, a performance bond that will extend the amount of the bid bond to 5 percent of the value of the contract. The performance bond is considered as a guarantee for the execution of the contract and must be refunded after complete execution of the contract. If the successful bidder is located abroad, the provision of the performance bond is extended to twenty days. The competent authority has the right to extend the above-mentioned periods an additional ten days.

If the successful bidder did not pay the final deposit during the time limit, the administrative authority – after notifying him by a confirmed registered letter – has the right to cancel the contract and execute it with the bidder following him in rank. In this case, the temporary deposit will not be refunded.

The administrative authority will also have the right to deduct all the amounts related to any loss that occurred due to the non-execution of the contract from any amount that is due or will be due to the defaulting bidder. If these amounts are not sufficient to cover the loss, the administrative authority has the right to make the deduction from any amounts due to the submitter with another administrative authority. In addition, the administrative authority maintains its right to take legal action against the submitter.

It is permitted, after obtaining the approval of the competent authority and against a certified letter of guarantee, to pay advanced down payments according to the rates, limits, terms, conditions and procedures set forth in the Executive Regulation of Law 89/1998.

If the successful bidder delays the execution of the contract, the competent authority has the right to extend the time limit to enable him to complete the execution of the contract, providing that a delay fine will be implemented on the contracting party regarding the delay period, taking into consideration that the delay fine cannot exceed 3 percent of the value of the contract (if the contract is related to providing services). The delay fine will be implemented as soon as the delay occurs without needing to notify the contracting party prior to implementing the fine.

The contracting party may be exempted from implementing the delay fine (after taking the opinion of the competent Consultation Administration at the State Counsel) if it has been proved that the delay was due to reasons beyond his control. The competent authority may also exempt the contracting party from implementing the delay fine (after considering the opinion of the competent Consultation Administration at the State Consultation) if the delay did not cause any damage. The implementation of the delay fine does not prevent the administrative authority to seek full compensation regarding its losses due to the delay.

In case of allegation by the contracting party that the administrative authority failed to fulfill its obligations mentioned in the contract due to its default, the contracting party will have the right to take legal action to claim compensation for the damages, which affected him, unless the two parties agreed to resort to arbitration according to Law 27/1994 and its amendments by Law 9/1997.

The contract will be automatically revoked in the following two cases:

- If it is proved that the contracting party used (either himself or through a third party) fraud or manipulation when dealing with the contracting authority.
- If the contracting party has been declared bankrupt or insolvent.

The administrative authority may terminate the contract if the successful bidder did not comply with any of the terms and conditions of the contract. The revocation or termination of the contract on the account of the contracting party will be through a decree issued by the competent authority. The contracting party must be notified of this decree by a confirmed registered letter that will be sent to his address mentioned in the contract. If the contract is revoked or terminated on the account of the contracting party, he will lose the performance bond, which will be entitled to the administrative authority.

If a dispute arises between the two parties during the termination of the contract, they may agree to settle this dispute through arbitration after receiving the approval of the competent Minister, providing that each party will continue to meet its obligations arising from the contract.

Additional Requirements of the Executive Regulation of Law 89/1998

The terms and conditions of the tender must be based on precise and detailed technical specifications, these specifications must be set by a technical committee which has experience regarding the required services. The above-mentioned committee will be in charge of putting an estimated value on the contract by taking into consideration market prices.

The book of conditions will be translated if it is to be advertised for abroad. The translation must include text stating that in case of contradiction or confusion between the two languages, the Arabic text will prevail.

The book of conditions must include that the offer must be submitted in two separate sealed envelopes, one for the technical offer and the second for the financial offer. The envelope containing the technical offer must include the required bid bond in addition to the data and documents that the administrative authority needs to ensure the conformation of the technical offer with the conditions and specifications in the book of conditions.

The administrative authority must obtain – prior to the advertisement of the tender – all the required approval and permits related to the subject of the contract.

The advertising of the public tender must be done twice at the appropriate time in one or two broadly circulated daily newspapers. The advertisement must include:

- The authority to which the offer should be submitted.
- The deadline for submitting the offer.
- The required service.
- The amount of the bid bond.
- The percentage of the performance bond.
- The price of the book of conditions and its annexes.
- Any other data the administrative authority see necessary.

Foreign tenders must be advertised in Egypt and abroad and in the Arabic and English language. It is also desirable to request that the Embassies and Consulates of the foreign countries in Egypt inform the companies working in the same field in their own countries about the advertisement of the tender. In addition to all the above, the advertisement may also be done through any other broadly circulated media upon the approval of the competent authority.

The tender offers should allow a minimum of thirty days starting from the date of the first advertisement in the daily newspaper for a response. With the approval of the competent authority, this time limit may be reduced providing that it is not less than twenty days.

The book of conditions should include the validity period of the submitted offer, providing that it does not exceed three months. However in cases of necessity, as required by the nature and circumstances of the subject of the contract, the book of conditions may state, a validity period exceeding the three months. The validity period will be calculated starting from the scheduled date for opening the technical envelopes, providing that the notification of acceptance of the offer should be done before the expiration of the validity period. If this is not possible, then the Director of the Purchasing Department must request the submitters of the offers to extend the validity period of their offers until the required duration.

Any offer or modification of the offer which will be received after the scheduled deadline of opening the technical envelopes must be submitted immediately to the head of the committee to

be opened and marked with the date and hour of its submission and then should be listed in the “late tenders list”.

In case of canceling the tender before the due date for opening the envelopes, the price of the book of conditions and specifications will be refunded to the buyers upon their request providing that they return it to the competent authority. If the cancellation is after the due date for opening the envelopes, then the price of the book of conditions and specifications will only be refunded to the buyers who submitted an offer regarding the tender. The refund will be upon their request providing that they return the book of conditions to the competent authority. However, if the cancellation of the tender was due to the non-compliance to the terms and specifications, then the price of the book of conditions will not be refunded.

In the cases where it is decided to cancel the tender and re-announce for it with the same terms and conditions, then the price of the new book of conditions will not be collected from the offer submitters in the new tender who already bought the canceled book of conditions.

A contract must be drafted if the value of the tender exceeds fifty thousand EGP. If the value is lesser than this amount, then a declaration issued by the contracting party containing all the required guarantees will be sufficient. The contract must be drafted in three copies, one for the Accounting administration and attached to it all the submitted offers, the second copy to be delivered to the contracting party and the third copy to be kept at the competent department of executing the contract. Each copy of the contract must include the value of the performance bond, its kind and the date of its delivery. If the submitter of the offer withdrew his offer prior to the date determined to open the technical envelopes, he will lose the amount of the bid bond he paid.

Each offer submitted by a corporation must be accompanied with its articles of incorporation and its by-laws.

CONTRACT ENFORCEMENT AND DISPUTE RESOLUTION

Applicable law for privatization contracts shall be Egyptian law. There are two primary reasons for this practice: 1) the place of application of the contractual obligations will be on Egyptian soil, and; 2) a Ministerial decree committing the contracting parties to apply the Egyptian Law and for dispute resolution to either go to the Egyptian courts or arbitrate in the Cairo Regional Center for Commercial Arbitration. In all events, parties to the contract must be treated in the same manner regardless of their State position or rank and each shall have the equal opportunity to plead and argue his case.

In accordance with Law 27/1994, Article 1, the contracting parties should consider arbitration in case of any dispute. The articles of this law have been conformed to the requirements of UNCITRAL. The procedures of arbitration are much easier and informal than court procedures and require a shorter length of time. Article 45 states that the arbitration panel should submit their award within one year from the start of the arbitration process. Arbitration can be conducted in any language agreed to by the parties. The Cairo Arbitration Center has its own procedures that include submission of the following materials:

- A written request for arbitration
- A copy of the contract from which the dispute arises
- Legal evidence supporting the request for arbitration

In accordance with UNICITRAL rules, the center may intervene, at the party's request, to reach an amicable settlement of the dispute and this is called "conciliation."